REMARKS

In the Office Action of November 29, 2004, claims 11-16, 23-29, 31-32, 34-38, 40 and 42 stand rejected. Reconsideration and allowance of all pending claims are respectfully requested in view of the following remarks. No new subject matter is being added by this response.

I. CLAIM REJECTIONS.

A. 35 U.S.C. § 103 Rejections.

To establish a prima facie case of obviousness under 35 U.S.C. § 103, three requirements must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. 2143. Because the Examiner has not established a prima facie case of obviousness the Applicant respectfully traverses this rejection.

1. Belgin in view of one of ordinary skill in the art.

Claims 11-16, 23-29, 31-32, 34-38, 40 and 42 stand rejected under 35 U.S.C. § 103 as unpatentable over U.S. Patent No. 5,220,681 to Belgin (*Belgin*) in view of, presumably, what is known in the art. However, the Examiner fails to establish a prima facie case for obviousness because (1) there is no suggestion or motivation, either in the *Belgin* reference or in the knowledge generally available to one of ordinary skill in the art, to modify *Belgin* as indicated by the Examiner and (2) *Belgin*, neither alone nor in any combination, fails to disclose, teach or suggest all limitations of the pending claims. Therefore, these rejections should be withdrawn.

Belgin discloses a decoding and display system for use in a navigational unit aboard an aircraft. The system monitors transmissions and decodes Morse code for presentation visually or audibly to the pilot. The system generates a warning upon two occurrences: (1) a loss of signal (signal too low to detect) or (2) a loss of power. (Col. 7, lines 41-50).

Claim 11, recites, in part, "wherein said controller communicates with said audio synthesizer when a malfunction is detected with respect to said display device". *Belgin* fails to disclose, teach or suggest such a limitation. This argument was originally made in response to the Office Action of August 3, 2004.

In response the Examiner argues that *Belgin* discloses a display unit, a speech synthesizer, and a computer which controls feedback to the display unit and speech synthesizer. The Examiner admits that *Belgin* does not explicitly teach that the "controller communicates with said audio synthesizer when a malfunction is detected with respect to said display device." The Examiner argues, however, that since *Belgin* teaches monitoring for loss of signal or power it would be obvious to one of skill in the art to also include monitoring for loss of a display device. The Examiner further argues that the motivation to alter *Belgin* comes from the fact that because *Belgin* teaches it is important to augment prior art avionics equipment to allow for an indication of what frequency the radio is tuned through a display unit or speech synthesizer, one of skill in the art, knowing that *Belgin* also teaches the monitoring of the power supply and the discriminator unit for malfunction, would expect *Belgin* to be able to detect and react to a malfunction in the display unit.

This argument is pure hindsight reconstruction. Nothing in *Belgin* discloses, teaches or suggests the monitoring of the display device for failure or communications with an audio synthesizer in the result of a failure of the display device. Further, *Belgin* at column 4, lines 1-6 clearly states that only the operation of the tunable filter/frequency discriminator unit and the power supply are monitored. Thus, there is nothing to lead one of skill in the art to expect a system that "communicates with said audio synthesizer when a malfunction is detected with respect to the said display device."

Additionally, assuming arguendo, even if one of skill in the art thought it important to provide for a failure in the display device or voice synthesizer, the question is why wouldn't one of skill in the art provide a different way of handling the failure of the display instead of employing a controller that "communicates with said audio synthesizer when a malfunction is detected with respect to the said display device", as in claim 11? For example, a backup display could be provided. Thus, not only is there no motivation or suggestion to monitor for the failure of the display unit, there is also no motivation or suggestion to modify *Belgin* in the exact same way as laid out in the Applicant's claims to react to a malfunction in the display unit, as opposed

to some other way. In the end there is but one conclusion; the only motivation to alter the prior art to include a controller that "communicates with said audio synthesizer when a malfunction is detected with respect to the said display device" is the Applicant's patent application. Because this rejection is based on hindsight reconstruction, it must be withdrawn.

The Examiner's final argument with regard to claim 11 is that since *Belgin* teaches control adjustments are readily made to control software that supervises the operation of the system, and since one of ordinary skill in this art has a high level of skill, it would be obvious to provide for detection of a malfunction in the display.

This argument is flawed for several reasons. First, the control adjustments discussed in *Belgin* are fairly limited:

> The front panel switches may be employed to externally control a number of operational parameters of the system, such as whether to display station identification or the actual code contained within the monitored signal of interest, display intensity, the intensity of the audio output of speech synthesizer 60, etc. As in the case of other operational aspects of the system, such as the frequency spectrum boundaries delineated above, neither the type nor number of parameters that are controlled by way of the switch panel 40 are to be considered limited to the examples presented here. Control adjustments are readily effected by way of a straightforward modification of the control software through which microcontroller 20 supervises operation of the system. (column 4, lines 56 to column 5, line 9).

Thus, what *Belgin* is discussing is adjustment to the controls such as the front panel switch controls. *Belgin* is not disclosing that other systems, aside from the frequency discriminator and audio synthesizer, should be monitored.

Additionally, the gist of this argument is that the high level of skill in the art is enough to provide motivation to add the limitations of the Applicant's invention to *Belgin*. However, reliance on the level of skill in the art to provide motivation is impermissible. MPEP 2143.01. Therefore, for these reasons the rejection of claim 11 should be withdrawn.

Claims 12-16 depend from allowable claim 11; therefore, for at least this reason claims 12-16 are in condition for allowance.

Claim 23 stands rejected by the Examiner for the same reason as claim 11. Additionally, the Examiner argues that a second operating mode is taught in column 7, lines 40-45 where the

system of *Belgin* detects a loss of signal or a too weak signal and provides a loss of signal announcement.

The arguments concerning claim 11 apply to claim 23 as well. For at least this reason claim 23 is in condition for allowance. Further, *Belgin* does not teach a system that "detects a first operating mode" and that "tunes the apparatus to a predetermined frequency, if the first operating mode is detected." The Examiner argues that a second operating mode corresponds to a loss of signal or a signal that is too weak and providing an announcement of the loss of station. Since claim 23 does not recite a second operating mode, it is assumed the Examiner meant *Belgin* shows a first operating mode. Even with that adjustment to the Examiner's argument, this limitation is not found in *Belgin*. Further, the Examiner has provided no other prior art that discloses such a limitation. Therefore, for at least this reason, claim 23 is in condition for allowance.

Additionally, claims 24-27 depend from allowable claim 23 and, for at least this reason, claims 24-27 are in condition for allowance.

Considering independent claim 40, while not specifically mentioned by the Examiner in the Office Action, it is assumed that claim 40 is also rejected for the reasons outlined with respect to claim 11. Therefore, for the reasons discussed in conjunction with claim 11, claim 40 is in condition for allowance.

Considering independent claim 42, while not specifically mentioned by the Examiner in the Office Action, it is assumed that claim 42 is also rejected for the reasons outlined with respect to claim 11. Therefore, for the reasons discussed in conjunction with claim 11, claim 42 is in condition for allowance.

2. Belgin in view of Sinay.

Claims 28, 29, 31-32, 34-38, 11-16 and 23-27 stands rejected as unpatentable over *Belgin* in view of Sinay *(Sinay)*.

Sinay teaches that redundant systems are desirable. In particular *Sinay* teaches that in a proposed Integrated Communication, Radio, Navigation and Identification (ICNRI) system if the avionics display system was to fail, the man-machine interface can be provided by a backup

control panel and audio volume control panel. From this reading of *Sinay*, it is the control functions, such as those used by the pilot, that are backed-up.

Therefore, the teachings of *Sinay* do not overcome the shortcomings of *Belgin*.. For example, *Sinay* does not disclose, teach or suggest "visually presenting the first selected setting during a first mode" and "audibly presenting a second selected setting during a second mode, the second selected setting a default setting that is selected upon failure of a visual display" as is disclosed in claim 28. Also, *Sinay* fails to disclose teach or suggest "audibly announcing the first frequency during a second mode of operation; and the second mode of operation entered upon the inability to visually display the first frequency", as disclosed in independent claim 32. Further, *Sinay* fails to disclose, teach or suggest "visually display the first frequency during a first mode of operation; audibly announce the first frequency during a second mode of operation; and the second mode of operation entered upon failure to visually display the first frequency", as in independent claim 38. For independent claim 11, *Sinay* fails to disclose, teach or suggest "communicates with said audio synthesizer when a malfunction is detected with respect to said display device." And for independent claim 23, *Sinay* fails to disclose, teach or suggest detecting "a first operating mode" that "tunes the apparatus to a predetermined frequency, if the first operating mode is detected." For at least this reason, claims 28, 32, 38, 11 and 23, as well as dependant claims 29, 31, 34-37, 12-15 and 24-27, are allowable.

Additionally, claim 28, recites, in part "visually presenting the first selected setting during a first mode" and "audibly presenting a second selected setting during a second mode, the second selected setting a default setting that is selected upon failure of a visual display". The *Belgin/Sinay* combination fails to disclose, teach or suggest a default setting different from a first selected setting being audibly presented. For at least this reason, claim 28 is in condition for allowance.

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II. CONCLUSION.

For the foregoing reasons, the present application is believed to be in condition for allowance and favorable action is respectfully requested. The Examiner is invited to telephone the undersigned at the telephone number listed below if it would in any way advance prosecution of this case.

While no other fees are believed due, the applicant hereby requests that any other required fee to maintain pendency of this case, except for the Issue Fee, be charged to Deposit Account 50-2091.

Respectfully submitted,

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Date

By _____
Alexander B. Ching
Reg. 41,669

Ingrassia, Fisher and Lorenz P.C.
7150 East Camelback Road, Suite 325
Scottsdale, Arizona 85251
Telephone: (480) 385-5060
Fax: (480) 385-5061
Customer No. 29906